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HOUSE BILL 368

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS; ENACTING
THE UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Uniform Child Witness Testimony by Alternative Methods Act".

Section 2. DEFINITIONS.--As used in the Uniform Child
Witness Testimony by Alternative Methods Act:

A. "alternative method" means a method by which a
child witness testifies that does not include all of the
following:

(1) having the child testify in person in an
open forum;

(2) having the child testify in the presence
and full view of the finder of fact and presiding officer; and

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1 (3) allowing all of the parties to be present,
2 to participate and to view and be viewed by the child;

3 B. "child witness" means an individual under the
4 age of sixteen who has been or will be called to testify in a
5 criminal or noncriminal proceeding;

6 C. "criminal proceeding" means a trial or hearing
7 before a court in a prosecution of a person charged with
8 violating a criminal law of New Mexico or a delinquency
9 proceeding pursuant to the Delinquency Act involving conduct
10 that if engaged in by an adult would constitute a violation of
11 a criminal law of New Mexico; and

12 D. "noncriminal proceeding" means a trial or
13 hearing before a court or an administrative agency of New
14 Mexico having judicial or quasi-judicial powers, other than a
15 criminal proceeding.

16 Section 3. APPLICABILITY.--

17 A. The Uniform Child Witness Testimony by
18 Alternative Methods Act applies to the testimony of a child
19 witness in a criminal or noncriminal proceeding. However, the
20 Uniform Child Witness Testimony by Alternative Methods Act does
21 not preclude, in a criminal or noncriminal proceeding, any
22 other procedure permitted by law for a child witness to testify
23 by an alternative method, however denominated, or in a closed
24 forum.

25 B. The supreme court may adopt rules of procedure

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1 and evidence to implement the provisions of the Uniform Child
2 Witness Testimony by Alternative Methods Act.

3 Section 4. HEARING WHETHER TO ALLOW TESTIMONY BY
4 ALTERNATIVE METHOD.--

5 A. The presiding officer in a criminal or
6 noncriminal proceeding may order a hearing to determine whether
7 to allow a child witness to testify by an alternative method.
8 The presiding officer, for good cause shown, shall order the
9 hearing upon motion of a party, a child witness or an
10 individual determined by the presiding officer to have
11 sufficient standing to act on behalf of the child.

12 B. A hearing to determine whether to allow a child
13 witness to testify by an alternative method shall be conducted
14 on the record after reasonable notice to all parties, to any
15 nonparty movant and to any other person the presiding officer
16 specifies. The child's presence is not required at the hearing
17 unless ordered by the presiding officer. In conducting the
18 hearing, the presiding officer is not bound by rules of
19 evidence except the rules of privilege.

20 Section 5. STANDARDS FOR DETERMINING WHETHER A CHILD
21 WITNESS MAY TESTIFY BY ALTERNATIVE METHOD.--

22 A. In a criminal proceeding, the presiding officer
23 may allow a child witness to testify by an alternative method
24 only in the following situations:

25 (1) the child may testify otherwise than in an

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1 open forum in the presence and full view of the finder of fact
2 if the presiding officer finds by clear and convincing evidence
3 that the child would suffer serious emotional trauma that would
4 substantially impair the child's ability to communicate with
5 the finder of fact if required to testify in the open forum;
6 and

7 (2) the child may testify other than
8 face-to-face with the defendant if the presiding officer finds
9 by clear and convincing evidence that the child would suffer
10 serious emotional trauma that would substantially impair the
11 child's ability to communicate with the finder of fact if
12 required to be confronted face-to-face by the defendant.

13 B. In a noncriminal proceeding, the presiding
14 officer may allow a child witness to testify by an alternative
15 method if the presiding officer finds by a preponderance of the
16 evidence that allowing the child to testify by an alternative
17 method is necessary to serve the best interests of the child or
18 enable the child to communicate with the finder of fact. In
19 making this finding, the presiding officer shall consider:

- 20 (1) the nature of the proceeding;
21 (2) the age and maturity of the child;
22 (3) the relationship of the child to the
23 parties in the proceeding;
24 (4) the nature and degree of emotional trauma
25 that the child may suffer in testifying; and

1 (5) any other relevant factor.

2 Section 6. FACTORS FOR DETERMINING WHETHER TO PERMIT
3 ALTERNATIVE METHOD.--If the presiding officer determines that a
4 standard pursuant to Section 5 of the Uniform Child Witness
5 Testimony by Alternative Methods Act has been met, the
6 presiding officer shall determine whether to allow a child
7 witness to testify by an alternative method and in doing so
8 shall consider:

9 A. alternative methods reasonably available;

10 B. available means for protecting the interests of
11 or reducing emotional trauma to the child without resort to an
12 alternative method;

13 C. the nature of the case;

14 D. the relative rights of the parties;

15 E. the importance of the proposed testimony of the
16 child;

17 F. the nature and degree of emotional trauma that
18 the child may suffer if an alternative method is not used; and

19 G. any other relevant factor.

20 Section 7. ORDER REGARDING TESTIMONY BY ALTERNATIVE
21 METHOD.--

22 A. An order allowing or disallowing a child witness
23 to testify by an alternative method shall state the findings of
24 fact and conclusions of law that support the presiding
25 officer's determination.

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1 B. An order allowing a child witness to testify by
2 an alternative method shall:

3 (1) state the method by which the child is to
4 testify;

5 (2) list any individual or category of
6 individuals allowed to be in, or required to be excluded from,
7 the presence of the child during the testimony;

8 (3) state any special conditions necessary to
9 facilitate a party's right to examine or cross-examine the
10 child;

11 (4) state any condition or limitation upon the
12 participation of individuals present during the testimony of
13 the child; and

14 (5) state any other condition necessary for
15 taking or presenting the testimony.

16 C. The alternative method ordered by the presiding
17 officer may be no more restrictive of the rights of the parties
18 than is necessary under the circumstances to serve the purposes
19 of the order.

20 Section 8. RIGHT OF PARTY TO EXAMINE CHILD WITNESS.--An
21 alternative method ordered by the presiding officer shall
22 permit a full and fair opportunity for examination or cross-
23 examination of the child witness by each party.

24 Section 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--
25 In applying and construing the Uniform Child Witness Testimony
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1 by Alternative Methods Act, consideration shall be given to the
2 need to promote uniformity of the law with respect to its
3 subject matter among states that enact it.

4 Section 10. SEVERABILITY.--If any part or application of
5 the Uniform Child Witness Testimony by Alternative Methods Act
6 is held invalid, the remainder or its application to other
7 situations or persons shall not be affected.

8 Section 11. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.